



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Tandy Construction, Inc.

**File:** B-238619

**Date:** February 22, 1990

Kent E. Young, Esq., for the protester.  
John M. Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### **DIGEST**

Protest is dismissed as untimely where initial agency-level protest against rejection of bid was filed 3 months after protester received notice of rejection.

### **DECISION**

Tandy Construction, Inc., protests the rejection of its bid under invitation for bids (IFB) No. R1-11-90-1, issued by the Forest Service, U. S. Department of Agriculture, for rental of heavy equipment. Tandy's low bid was rejected on the basis that it did not contain the required certification of equipment inspection.

We dismiss the protest as untimely.

Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1989). Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Thus, to be timely under our Regulations, Tandy's agency-level protest would have to have been filed within 10 working days after it learned of the basis of its protest.

Tandy was notified by letter dated October 16, 1989, that its bid was found nonresponsive since it did not include the inspection forms required by the solicitation. Although several telephone conversations ensued between Tandy and the contracting officer, Tandy did not protest in writing until January 17, 1990, more than 10 working days after the notice. Although Tandy then protested to our Office within

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10 days after January 17, its protest was untimely under the above standard.

Tandy claims it did not know of its basis for protest until January 30, the date it received the written denial of its January 17 agency protest; Tandy asserts that the contracting officer's letter was the first indication it had that the contracting officer had "finalized" her decision. This argument is untenable; Tandy should have been aware that the agency's position was final when it received the October 16 notice that its bid had been rejected. Tandy's attempts to persuade the agency to change its nonresponsiveness determination before filing its protest did not toll our timeliness requirements. See Midwest CATV--Request for Recon., B-233105.4, July 20, 1989, 89-2 CPD ¶ 64.

Tandy also argues that its protest to the agency was timely because it was expressed verbally. However, under Federal Acquisition Regulation § 33.107, an initial agency-level protest must be made in writing. See also Riverside Research Inst., B-234844, Mar. 31, 1989, 89-1 CPD ¶ 340.

The protest is dismissed.

*Ronald Berger*

Ronald Berger  
Associate General Counsel